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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

OEM-1717

UNITED STATES OF AMERICA,

Plaintiff,

- against -

B.C.F. OIL REFINING INC.,
CARY FIELDS, and
AND 1.85 ACRES OF LAND, MORE OR LESS,
LOCATED AT 360-362 MASPETH AVENUE,
BROOKLYN, NEW YORK,

Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JAN 31 2005 ★ Civil Action

BROOKLYN OFFICE No. CV-

(, J.)

(, M. J.)

SIFTON, J.

ROLLAX M.J.

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The United States of America, by authority of the Attorney General of the United States,
and through the undersigned counsel, acting at the request of the Administrator of the United
States Environmental Protection Agency ("EPA"), files this Verified Complaint and avers as
follows:

NATURE OF THE ACTION

1. This is a civil action brought pursuant to the Comprehensive Environmental Response,
Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601-9675:

a. For recovery in personam against defendants B.C.F. Oil Refining, Inc.
("B.C.F.") and Cary Fields ("Fields"), of response costs incurred by the United States pursuant to
Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), in connection with the release or threatened
release of hazardous substances into the environment at or from a facility known as the B.C.F.
Oil Refining, Inc. Superfund Site ("Site"), located in Brooklyn, New York.

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b. For recovery in rem of all costs constituting the lien of the United States pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l) ("CERCLA lien"), against defendant 1.85 Acres of Land, more or less, located at 360-362 Maspeth Avenue, Brooklyn, New York 11211 ("1.85 Acres of Land"), as further described below in paragraph 8.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and jurisdiction in personam over defendants B.C.F. and Fields pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. This Court has jurisdiction in rem over defendant 1.85 Acres of Land pursuant to Section 107(l)(4) of CERCLA, 42 U.S.C. § 9607(l)(4), 28 U.S.C. § 1655, and Federal Rule of Civil Procedure 4(n).

4. Venue is proper in this judicial district for the in personam claims pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391(b), 1391(c) and 1395, because the claims arose, and the threatened or actual releases of hazardous substances occurred, in this district.

5. Venue is proper in this judicial district for the in rem claim pursuant to Section 107(l)(4) of CERCLA, 42 U.S.C. § 9607(l)(4), and 28 U.S.C. § 1391(b), because 1.85 Acres of Land is located, and EPA's removal action at the Site occurred, in this district.

DEFENDANTS

6. B.C.F. Oil Refining, Inc. is a domestic corporation organized under the laws of the State of New York that operated a business at 360-362 Maspeth Avenue, Brooklyn, Kings County, New York.

7. Cary Fields is an individual residing at 290 Church Road, Putnam Valley, New York.

8. Defendant 1.85 Acres of Land is formally identified on the Kings County tax map 11 as Block 2917, Lot 110, denoted 360-362 Maspeth Avenue, Brooklyn, New York, and is recorded in the Kings County Clerk's Office at Liber 1052, Page 1663.

9. B.C.F. was, at all times relevant to this matter, the owner of, and is the current owner of Defendant 1.85 Acres of Land. B.C.F. was a past operator at the Site.

STATUTORY BACKGROUND

10. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants and for funding the costs of such abatement and related enforcement activities, which are known as "response" actions. 42 U.S.C. §§ 9604(a), 9601(25).

11. Under Section 104(a)(1) of CERCLA, as amended:

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment

42 U.S.C. § 9604(a)(1).

12. For CERCLA response actions and enforcement purposes, the Administrator of EPA is the President's delegate, as provided in operative Executive Orders, and, within certain limits, the Regional Administrators of EPA have been re-delegated this authority.

13. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this Section--

- (1) the owner and operator of a vessel or a facility, [and]
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

* * *

shall be liable for - -

- (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan

14. Section 107(l)(1) of CERCLA, 42 U.S.C. § 9607(l)(1), provides in pertinent part:

All costs and damages for which a person is liable to the United States under [Section 107(a) of CERCLA] . . . shall constitute a lien in favor of the United States upon all real property and rights to such property which -

- (A) belong to such person; and
- (B) are subject to or affected by a removal or remedial action.

15. Section 107(l)(2) of CERCLA, 42 U.S.C. § 9607(l)(2), provides in pertinent part:

The lien imposed by this subsection shall arise at the later of the following:

- (A) The time costs are first incurred by the United States with respect to a response action under this chapter.
- (B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of potential liability.

GENERAL FACTUAL ALLEGATIONS

16. The Site is approximately 1.85 acres in size and consists of a parcel of land located at 360-362 Maspeth Avenue, Brooklyn, Kings County, New York.

17. The Site is bordered on the south by a body of water known as English Kills. English Kills feeds into Newtown Creek, which, in turn, flows into the East River.

B.C.F.'s Operations at the Site

18. At all times relevant to this matter, B.C.F. owned and operated a facility at the Site for the collection, storage and processing of a variety of used oil products, as well as industrial wastewater containing oil (collectively "waste oils"). B.C.F. treated the waste oils through various processes in order to produce a fuel oil product suitable for sale to the public.

19. B.C.F.'s facility comprised a masonry building, approximately 16 interconnected underground and above-ground tanks and screening equipment ("Facility").

20. Fields was a shareholder of B.C.F., a paid consultant to B.C.F. and, on information and belief, the chairman of the board of B.C.F.

21. Fields has controlled and directed B.C.F.'s activities at the Site.

22. Fields has made decisions for B.C.F. specifically related to pollution at the Facility, and made decisions related to B.C.F.'s compliance with environmental laws and regulations.

23. The Facility was a "solid waste management facility" within the meaning of New York Environmental Conservation Law ("ECL") § 27-0701-2. The Facility was not authorized to handle hazardous wastes, including waste oils that contained polychlorinated biphenyl compounds ("PCBs") at concentrations greater than 50 parts per million ("ppm").

24. In April 1994, B.C.F. discovered that one of its tanks had become contaminated with PCBs at levels in excess of 2,300 ppm.

25. B.C.F. continued operations until August 1994, four months after it discovered that one of its tanks was contaminated with PCBs. These operations by B.C.F. included accepting incoming loads of waste oil and making at least one shipment of recycled waste oil.

26. B.C.F. later discovered that all of its tanks had become contaminated with PCBs and that many of the tanks were contaminated with PCBs at concentrations above 50 ppm.

27. In August 1994, the Facility ceased operations.

28. From August 1994 to May 2000, B.C.F. maintained one employee for security and maintenance of the Site.

29. B.C.F. did not remove the PCB-contaminated waste oils from its tanks.

30. In May 2000, B.C.F. abandoned the Facility, leaving approximately 600,000 gallons of PCB-contaminated waste oils, sludges and wastewaters in the tanks.

31. At the time B.C.F. abandoned the Facility, the tanks were between 30 and 70 years old. The four above-ground storage tanks that contained the largest volume of PCB-contaminated waste oils had patches of rust. The secondary containment for these tanks had cracks in the concrete walls and an incomplete concrete floor. These deficiencies rendered these tanks potentially inadequate to contain a possible release of hazardous substances.

32. If hazardous substances were released from one or more of B.C.F.'s storage tanks, which are located less than 100 feet from English Kills, the hazardous substances could have migrated into and through the Newtown Creek and the East River, impacting sensitive ecosystems. Such a release of hazardous substances also could have migrated off-site and affected soils, sediments, groundwater and/or surface waters.

33. Exposure of humans to the various hazardous substances present at the Site by direct contact, inhalation, or ingestion could have caused a variety of adverse health effects.

34. B.C.F.'s abandonment of the Facility with PCB-contaminated waste oil still remaining in the tanks constituted a "release" of hazardous substances within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

EPA's Response Actions

35. Starting in March 2000, EPA conducted an expedited Removal Assessment ("RA"), which included site inspections and analysis of environmental sampling and studies conducted at the Site.

36. Among the environmental sampling and studies that EPA analyzed were test results that revealed, in addition to PCBs, dichlorobenzene, trichlorobenzene, trichloroethylene, 1,1,1-trichloroethane, perchloroethylene and two chlorofluorocarbon compounds, benzene, toluene, ethyl benzene, xylenes and other volatile organic compounds. These substances are hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. § 302.4.

37. From May 2000 to October 2001, EPA performed a removal action at the Site. The removal action included the sampling, removal and disposal of contaminated oils, sludges and water found in various tanks, a sump, containers, and tank trailers at the Site; the cleaning of the vessels, piping and appurtenances; the opening and backfilling of the underground storage tanks; the disposal of sixty-five 55-gallon drums and fifteen 85-gallon drums containing solids, sludge, water; and the decontamination of the Facility's "screen house."

38. To date, EPA has incurred at least \$3.5 million in performing response actions regarding the Site within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25),

including the removal action described above. The United States continues to incur response costs within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

39. By letter dated August 23, 2002 to B.C.F. and Fields, EPA demanded reimbursement of the response costs that it had incurred to date in connection with the Site. B.C.F. and Fields have not reimbursed the United States for the response costs that the United States incurred, and continues to incur, in connection with the Site.

40. By letter dated April 28, 2000, EPA notified B.C.F. of EPA's intent to file a CERCLA lien, pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 107(l), against the property that comprises the Site. The letter provided an opportunity for B.C.F. to contest the proposed lien.

41. On July 17, 2000, EPA filed and perfected the CERCLA lien in the office of the Kings County Clerk.

**FIRST CLAIM FOR RELIEF:
COST RECOVERY AGAINST B.C.F.**

42. Paragraphs 1 through 43 are re-alleged and incorporated herein.

43. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

44. There have been releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and threatened releases, of hazardous substances at or from the Site.

45. The United States has incurred costs of response, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), to respond to the releases or threatened releases of hazardous substances at the Site.

46. The response actions taken and the response costs incurred by the United States at the Site were not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), which was promulgated pursuant to Section 105(a) of CERCLA and is codified at 40 C.F.R. Part 300.

47. B.C.F. is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

48. B.C.F. is liable to the United States pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as the current owner of the Facility.

49. B.C.F. is liable to the United States pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as the owner and operator of the Facility at the time of disposal of hazardous substances at the Facility.

50. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), B.C.F. is jointly and severally liable to the United States for all response costs incurred and to be incurred in connection with the Site.

**SECOND CLAIM FOR RELIEF:
COST RECOVERY AGAINST FIELDS**

51. Paragraphs 1 through 52 are re-alleged and incorporated herein.

52. Fields is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

53. Fields is liable to the United States pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as an operator of the Facility at the time of disposal of hazardous substances at the Facility.

54. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Fields is jointly and severally liable to the United States for all response costs incurred and to be incurred in connection with the Site.

**THIRD CLAIM FOR RELIEF:
COST RECOVERY *IN REM* AGAINST DEFENDANT 1.85 ACRES OF LAND**

55. Paragraphs 1 through 56 are re-alleged and incorporated herein.

56. Pursuant to Section 107(l)(1) of CERCLA, 42 U.S.C. § 9607(l)(1), all costs incurred by the United States in connection with the Site constitute a CERCLA lien upon the real property which is subject to or affected by the response actions taken by EPA at the Site, including defendant 1.85 Acres of Land.

57. Pursuant to Section 107(l)(2) of CERCLA, 42 U.S.C. § 9607(l)(2), the CERCLA lien upon the real property will continue until the liability for the United States' unreimbursed response costs incurred in connection with the Site is satisfied.

58. Pursuant to Section 107(l)(4) of CERCLA, 42 U.S.C. § 9607(l)(4), the United States is entitled to recover the costs constituting the CERCLA lien through this claim in rem.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that this Court:


A. Order Defendants B.C.F. and Fields, jointly and severally, to reimburse the United States for all response costs incurred and to be incurred in connection with the Site, including interest, in an exact amount to be proven at trial;

B. Order that Defendant 1.85 Acres of Land be sold at such time in a manner consistent with overall site remediation and that the proceeds from such sale be paid to the United States in reimbursement of its response costs incurred and to be incurred in connection with the Site; and

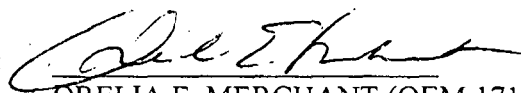
C. Grant the United States such other relief as the Court deems just and proper.

Respectfully submitted,

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division

By: 
CATHERINE R. McCABE
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Environment and Natural Resources Division
United States Department of Justice

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Of Counsel:

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New York, New York 10007-1866

VERIFICATION OF COMPLAINT

I, Thomas Budroe, am employed by the United States Environmental Protection Agency as an On-Scene Coordinator. I have been responsible for EPA's response actions at the B.C.F. Oil Refining, Inc. Superfund Site. I have reviewed EPA's files at EPA's office located at 2890 Woodbridge Avenue, Edison, New Jersey pertaining to the response actions taken at the B.C.F. Oil Refining, Inc. Superfund Site and I also have personal knowledge pertaining to certain of the facts addressed herein. I swear under penalty of perjury that the allegations set forth above are true and accurate to the best of my knowledge.

Date:

10/14/04

Thomas Budroe

Thomas Budroe
On-Scene Coordinator
Emergency and Remedial Response
Division
Response and Prevention Branch
U.S. Environmental Protection Agency,
Region 2
2890 Woodbridge Avenue, MS-211
Edison, New Jersey 08837

SIR:

PLEASE TAKE NOTICE that the within will be
presented for settlement and signature to the Clerk
of the United States District Court in his office at the
UNITED STATES DISTRICT COURT U.S. Courthouse, 225
Cadman Plaza East, EASTERN DISTRICT OF NEW YORK
Brooklyn, New York, on the _____ day of _____,
20____, at 10:30 o'clock in the forenoon.

Dated: Brooklyn New York,

_____, 20____

United States Attorney,

Attorney for _____

To:

Attorney for _____

SIR:

PLEASE TAKE NOTICE that the within is a
true copy of _____ duly entered herein
on the _____ day of _____
_____, in the office of the Clerk of
the Eastern District of New York,
Dated: Brooklyn, New York

_____, 20____

United States Attorney,

Attorney for _____

To:

Attorney for _____

Civil Action

No.

UNITED STATES DISTRICT COURT
Eastern District of New York

UNITED STATES OF AMERICA,

Plaintiff,

-against-

B.C.F. OIL REFINING INC.,
CARY FIELDS, and
AND 1.85 ACRES OF LAND, MORE OR LESS,
LOCATED AT 360-362 MASPETH AVENUE,
BROOKLYN, NEW YORK,

Defendants.

VERIFIED
COMPLAINT

ROSLYNN R. MAUSKOPF

United States Attorney,
Attorney for Defendant,
Office and Post Office Address,
United States Courthouse
One Pierrepont Plaza
Brooklyn, New York 11201

Due service of a copy of the within _____
_____ is hereby admitted.

Dated: _____, 20____

Attorney for Defendant _____

ORELIA E. MERCHANT, AUSA
(718) 254-6058



Silvia Carreno

08/23/2004 04:56 PM

To: Eric Schaaf/R2/USEPA/US@EPA
cc:
Subject: Bankruptcy referral

----- Forwarded by Silvia Carreno/R2/USEPA/US on 08/23/2004 04:55 PM -----



Silvia Carreno

08/20/2004 02:41 PM

To: Eric Schaaf/R2/USEPA/US@EPA
cc: Andrew Praschak/R2/USEPA/US@EPA
Subject: Bankruptcy referral

Please find enclosed a referral letter that I have drafted upon DOJ's request to file the proof of claim in the bankruptcy proceeding filed by Jorge Ortiz. (J&G case) I will put it up for concurrence but since it is for your signature, I would like you to take a look at it before. (Andy took a quick look at it this morning and has no problem with it.)

Thanks

Silvia



j&g.bankruptcyreferral.wj